

**BEFORE THE LAND USE HEARINGS
CLARK COUNTY, WASHINGTON**

REGARDING THE APPLICATION FOR A)
PRELIMINARY PLAT TO SUBDIVIDE AN)
APPROXIMATE 2-ACRE PARCEL INTO 26)
SINGLE-FAMILY ATTACHED LOTS IN THE)
R-18 ZONE DISTRICT UTILIZING THE)
TOWNHOUSE DEVELOPMENT STANDARDS)
IN THE UNINCORPORATED CLARK)
COUNTY, WA.)

FINAL ORDER

WINDMILL TERRACE PHASE 2
PLD2003-00042; SEP2003-
00078; WET2003-00026;
EVR2003-00046; HAB2004-
00147

APPROVED WITH CONDITIONS

INTRODUCTION

The subject property is located at 602 NE 139th Street. The site is forested with an isolated wetland located in the central portion of the site. The subject property is zoned R-18. Surrounding properties to the north, east, and south are zoned R-18, and property to the west is zoned ML. The site is bordered by a mobile home park to the north, a single-family subdivision to the east, an industrial building to the west, and Phase 1 of Windmill Terrace to the south.

Windmill Terrace received Hearing Examiner approval under case number SUB97-037 (Ex. 9, Tab 5) on April 28, 1998. This approval included 25 lots and Tract A, which was identified for future development. On January 17, 2002 the proposal received post decision approval under case number PST2001-00025 (Ex. 16) to divide the project into two phases. Phase 1 included 17 lots, and Phase 2 included 8 lots and Tract A. Phase 1 was recorded on December 24, 2002 (Ex. 17).

The Applicant is requesting to divide Phase 2 and Tract A into 27 lots utilizing the townhouse provisions contained in CCC 18.406.020(H). This application includes requests for subdivision, SEPA, road modification, and wetland permit approval. Staff issued its original staff report and recommendation (Ex. 27), on October 8, 2003. Just before the hearing, staff discovered that the site contained Oregon White Oak, which are protected under the county's Habitat Protection Ordinance. At the public hearing held on October 23, 2003, the Applicant requested and was granted a hearing continuance. That continued hearing has been scheduled for September 9, 2004. The Applicant has applied for a habitat permit and has submitted a revised plat (Ex. 36).

Location: 602 NE 139th Street; Parcel Number(s): Tax lots 75 (185466), 123 (185523), and 139 (185539) located in the SE Quarter of Section 22,

Township 3 North, Range 1 East of the Willamette Meridian; Area:
Approximately 2 acres.

Applicant/owner: Waterford Development, Inc
4910 NW 127th Street
Vancouver, WA 98685

Comp Plan: Urban Medium Density Residential
Zoning: R-18

Applicable Laws: Clark County Code Sections: 12.05A (Transportation); 12.41 (Concurrency); 13.29 (Stormwater and Erosion Control Ordinance); 13.08A (Sewerage Regulations); 13.36 (Wetland Protection Ordinance); 13.40A (Water Supply); Title 15 (Fire Prevention); Title 17 (Land Division); 18.65 (Impact Fees); 18.311 (Residential Districts); 18.402A (Site Plan Review); 18.406.020(H) (Townhouse Developments); 18.600 (Procedures); 20.06 (SEPA) and RCW 58.17 (State Platting Laws).

HEARING AND RECORD

The Public Hearing on this matter was originally scheduled for October 23, 2003 and was continued for the purpose of dealing with the Oregon White Oaks under the habitat ordinance. The continued hearing resumed September 9, 2004. The record was kept open for two weeks for the Applicant to address mitigation issues with an off-site white oak that surfaced at the hearing. The public and Staff will then have one week to comment and the Applicant will have up to one week to rebut any Staff or public comment. The record closed on October 7, 2004.

A record of all testimony received into the record is included herein as Exhibit A (Parties of Record), Exhibit B (Taped Proceedings), and Exhibit C (written exhibits). These exhibits are filed at the City of Vancouver Development Review Services.

The application is vested on February 12, 2003. There are no disputes regarding vesting.

Testimony:

Dan Carlson, the lead County planner on this application, summarized the application and its associated staff report. Mr. Carlson noted that the original staff report and recommendation on this application was issued on October 8, 2003; the subsequent discovery of Oregon White Oak on the site caused the hearing on the application to be continued. Since then, a revised staff report and Applicant's mitigation plan have been issued; staff finds that the mitigation plan meets the habitat ordinance criteria. He said staff is recommending approval of this application, subject to the conditions of approval specified in the staff report.

The Examiner noted that, during a conference call this afternoon, Mr. Karpinski, representing the neighbors, had requested that this case be held over until 9 p.m., or continued. At the end

of that call, I agreed to wait for 15 minutes after the testimony on the previous case was concluded, said the Examiner; if he was not here, the record was to be kept open for a week. This issue is now moot as Mr. Karpinski is with us.

The Examiner noted based on his site visit that this lot is surrounded by other development and he had seen the grove of white oaks that is the subject of neighborhood concern; to my untrained eye, the entire site, of whatever habitat value, is a grove of different trees. However, at the end of the day, if this is approved what we'll have is wall-to-wall townhouses, with a few oaks preserved – how is that really habitat?

David Howe, the County's habitat biologist, said this is a stand of urban white oak. In urban areas, we can regulate Oregon White Oak up to a single tree if we can prove it has value to wildlife. This stand is large enough to support an array of species and it is being used by wildlife. As a result, the Applicant has developed the habitat mitigation plan that has already been mentioned; it involves some offsite mitigation. So you're saying that these white oaks will have some habitat value, primarily for birds? The Examiner asked. Correct, Mr. Howe replied.

David Ward, representing the Applicant, thanked County staff for their hard work on this application. He noted that the townhouses that would be constructed if this application is approved would be substantially similar to the other townhomes in Phase I, except that they will be some distance away from existing development. He noted that the original development, approved in 1998, was for 25 lots; during a subsequent post-decision review, this development was split into two phases. The Applicant already has an approval to construct eight lots on this property, he noted, pointing to the area south of the wetland.

Tract A is the wetland tract; it has a conservation covenant on it. It is an isolated Category 3 wetland 0.3 acre in extent; there is a letter, Exhibit 9, from the Corps of Engineers, stipulating that it is an isolated wetland. Mr. Ward read an excerpt from the conservation covenant, noting that it includes a stipulation that the County planning director can release the covenant. While this is not an issue for the Examiner to decide, it is worth noting that the County planning director has agreed to release this covenant as long as a wetland mitigation plan has been approved by County staff. He described the approval criteria for a wetland permit per section CCC 13.36.460.

The preliminary plan proposed filling the entire wetland site, Mr. Ward continued, and mitigating offsite in the Salmon Creek watershed at a 5:1 ratio. There is an issue in the staff report regarding whether it is more appropriate to mitigate in the Whipple Creek or Salmon Creek watershed; he said there is some confusion about which direction the water from this site would drain. Staff's conclusion was that mitigation in the Salmon Creek watershed would be appropriate. The bottom line is that there is no net loss in either wetland quality or function; we will provide a net improvement in habitat quantity and function.

With respect to the habitat conservation ordinance, Mr. Ward went on, you may have noticed that we applied under protest, because the definition is a bit vague. We weren't sure this ordinance applied to us; what we found, after working with the County, was that we could

comply with the ordinance in a way that allowed us to do the development we wanted to do. We hired Ecological Land Services (ELS) to prepare an oak assessment; he drew attention to Exhibit 35, the Applicant's habitat conservation plan, and provided a brief overview of its contents. He noted that the overall goal of the habitat conservation ordinance is to protect habitat while still allowing for development. A total of nine oak and five ash trees will be retained on-site; three other trees will be relocated. We're also replacing trees on-site, a total of 33 5-8-foot-tall oak saplings, as staff recommended. There will be a conservation covenant for the trees on site and the habitat will be substantially maintained with 93% canopy retention. This Plan will be phased in with thin out and transplant next fall and construction in the following spring. The woody debris from the tree removal will also be used for habitat enhancement, both on- and off-site. As part of the offsite mitigation associated with this development, a very large white oak in Battle Ground will be preserved through a covenant. The canopy of the Battle Ground oak exceeds combined canopy of all the white oaks on the site. Overall, the plan complies with both the spirit and letter of the habitat conservation ordinance, said Ward, and staff and WDFW agree with that conclusion.

The only issue is a minor road modification, Mr. Ward said; we would like to change the standard road cross section from a crown section to a shed section, per 12.05A.660.1. Also, Condition A-14 requires us to plant all of the landscaping prior to final plat; we would prefer to plant it all by the time of occupancy.

John Karpinski, representing Mr. and Mrs. Collins, who live adjacent to this project on the east, said his clients have an issue with the wetland covenant release, noting that he had thought such a release would require a legislative process through the County commissioners. However, the County informed him that the release was an intrinsic part of tonight's hearing. My understanding was that I was approving the wetland permit, which, *ipso facto*, would include the covenant release, said the Examiner. It is our position that the presence of this covenant renders the rear portion of this property undevelopable, Mr. Karpinski replied, unless the County decides to provide the covenant release. The County is mitigating only for the wetland loss, not the wetland conservation buffer loss. Under substantive SEPA, that is insufficient mitigation, which would have significant negative impacts. So you're saying 5:1 mitigation isn't adequate? The Examiner asked. Again, they're not mitigating for the buffer, Mr. Karpinski replied.

Second, he said, in regard to the wetland mitigation issue, is whether it's being done in the proper watershed, County code requires that mitigation be done in the same watershed – Whipple Creek, in this case. Mitigation should be closer to this site than the Applicant is proposing, citing 13.36.420(a)(a) in support of that position. The code should be required and followed; that's our position on that matter.

With respect to the County's wildlife habitat ordinance, Mr. Karpinski continued, the overarching purpose is to protect designated habitat through avoidance or reduction of activities. He noted that nothing in the ordinance speaks specifically to offsite mitigation measures; also, there is nothing that says that every square inch of the urban landscape must be developed to its full capacity.

Mr. Karpinski then went through the Applicant's habitat conservation plan, arguing that only 9 of the 23 oaks on site will be retained. He took issue with the notion that the proposed covenant will actually protect the large white oak in Battle Ground. Arguing that no off-site mitigation measures are expressly discussed in the habitat ordinance he made a twofold argument. First that the site is in the path of the proposed Parkway widening, so it would at the very least require pruning. Secondly that Battle Ground will protect Oregon White Oaks in their up coming code rewrite. So this mitigation at best has very limited value. I don't want to paint the Applicants as entirely black hats, he said; they obviously have tried. However, they are trying to overdevelop this particular site. Mr. Karpinski also took issue with the monitoring provisions of the proposal, noting that, in his view, the square footage requirements are inadequate. Also, they propose to transfer the financial obligation for the five-year monitoring plan to the homeowners after three years; Why? In conclusion, this is too much development for this site; in regard to the substantially maintaining criteria, losing 14 of the 23 trees on site isn't substantially maintaining the habitat. There is simply too much development and not enough protection, concluded Mr. Karpinski.

Bob Collins said he and his wife Patti have lived just across the fence line from this development for the past 10 years; he noted that ravens, magpies, Wilson's warblers and two species of woodpeckers use this habitat. The ash, Douglas fir and the understory are also all a part of the habitat. The fish pond in the Collins' backyard has attracted three species of frogs, probably from the wetland area. He noted that Deer Run Meadow, where he and his wife live, used to be a wetland; the County decreed that it be filled. He noted that a number of houses in that development flood every winter, and require sump pumps in their crawlspaces, because the wetland hasn't gone away. If we're having those kinds of problems in our development, it is logical to assume that the new development will as well. Also, he said, the argument that Battle Ground is an appropriate place to mitigate for this development is absurd; Whipple Creek is right next door and that's where the mitigation should be.

Patricia B. Collins said her main objection to this development is its lack of respect to the environment. This hearing process really only serves two parties: the developer and the County. It would be gross obliteration of a beautiful area and it is a dirty shame that Clark County is so focused on the almighty dollar that they lose sight of an existing habitat that brings peace and grace to the area. There are opossums, squirrels and deer that use that area, but because it is zoned R-18, they're willing to obliterate that area. They said we were notified before they destroyed the trees during Phase I; however, we were not. I realized what was happening, and contacted the County; they sent a representative who assured me that it was only the front part of the site that would be developed. We now learn that that wasn't true. There are just so many things that concern me about Clark County's integrity and it saddens me deeply. Take that to bed and sleep on it.

Carl Dugger from WDFW described his work in managing oak habitat for the State of Washington. He said WDFW agrees with the County that this stand meets the criteria for an urban stand of white oak; this is a small stand, containing small oaks. However, it does provide valuable wildlife habitat. Over time – 100 years or so – the oaks would likely be squeezed out by other species. He said that, in his view, what is proposed is a reasonable compromise, because it plants additional oaks and provides other habitat benefits. The site is too small to

qualify as urban natural open space; while we would like to see it preserved, we have no choice but to follow the law. He said he agrees with Mr. Karpinski's comment about the low likelihood that the Battle Ground tree will survive, or whether it actually meets the relevant criteria, given the fact that it is within an urban growth boundary.

There are a number of issues connected with this case, said the Examiner: whether the ordinance in fact applies to this development; the Applicant has reserved his right to say it does not. If it does apply, then who removes the covenant on the wetland? Then, assuming we clear that hurdle, we have two biologists offering a critique of the longevity of the existing oak habitat and arguing for the mitigation plan; there seems to be agreement that the plan, as proposed, is adequate, at least among the County and the State. There are concerns about the offsite mitigation proposed, with respect to the Battle Ground oak, and the watershed in which the watershed should wetland mitigation be undertaken.

Brent Davis, County wetland biologist, said that, first, with respect to the covenant release, the County concurs with Mr. Ward's conclusion that the County planning director has the authority to grant the release as long as a County-approved mitigation plan is in place. With respect to the buffer mitigation question, the function of the buffer is to protect the wetland. If the wetland is no longer there, a buffer is no longer needed. With respect to the Whipple Creek/Salmon Creek offsite mitigation issue, he has walked the area trying to trace the creeks and concluded that this wetland actually drains to neither; it is located almost equidistant between the Whipple and Salmon Creek watersheds, so mitigation in either watershed would be appropriate.

Mr. Howe said that, with respect to when the new oak trees would be planted, staff is willing to allow the Applicant to plant the trees prior to final occupancy, as long as they are willing to agree to a financial guarantee. With respect to Mr. Karpinski's comments, 13.51.080(2) lays out the meat of the habitat ordinance and staff feels that the habitat conservation plan proposed by the Applicant meets the goals of the ordinance. It is our collective judgment that, while risk does exist, it can be mitigated for by the Applicant. Finally, said Mr. Howe, the Applicant is losing a lot as a result of the habitat on this site and is undergoing substantial costs for the mitigation. With respect to the Battleground oak, both Mr. Karpinski and WDFW have valid points; the Applicant has other options available in terms of off-site mitigation.

On rebuttal Mr. Ward said that the wetland conservation covenant is Exhibit 15; it is very clear that the County planning director has the authority to release the covenant, and this really isn't an issue that is before the Examiner tonight. Obviously we have to obtain a wetland permit before that can occur, so it really isn't an issue.

With respect to the wetland buffer issue, there will be an extra acre of buffer added to the Salmon Creek mitigation site to mitigate for any loss of wetland buffer on this property. With respect to the question of which watershed the mitigation should occur in, there was a meeting on-site at which the conclusion was that this wetland once drained to Salmon Creek, and that is an appropriate site for off-site mitigation.

With respect to the intent of the ordinance, 40.440.010.A or 13.51.010 spells that out. What it says, essentially, is that the County has to allow the reasonable use and development of its lands as long as valuable wildlife habitat sites are protected. Mr. Ward noted that this is the first time he has heard the concern about the Battle Ground oak tree; he said the Applicant would be willing to keep the record open for two weeks to work with the County to find more appropriate trees to protect. Couldn't we just deal with that as a condition of approval, rather than keeping the record open? the Examiner asked. We could, Ward agreed. How rare are these trees and is this a feasible course of action? the Examiner asked. I would say it should be relatively easy to find some non-jurisdictional oak in unincorporated parts of the County, Mr. Howe replied. I think we could find such a tree, said Mr. Ward; at the same time, I would like to preserve the option of taking a closer look at the Battle Ground oak.

So you may provide a revised mitigation proposal? the Examiner asked. Within two weeks, Mr. Ward replied. Mr. Howe said the County will need one week to respond. Mr. Karpinski requested an opportunity to respond to the revised proposal as well; the Examiner agreed. With a week for Applicant rebuttal, the record will remain open for one month.

With respect to the reasonable use criteria of the ordinance (Section 40.440.020 or CCC 13.51.080), said Ward, these criteria include avoidance, alternative onsite mitigation, establishing existing trees and buffers, establishing and planting new trees, seasonal restrictions on construction activities, implementing best management practices, monitoring and review of impacts. The Applicant is willing to be responsible for the monitoring for the full five years of the plan -- establishing performance measures, and establishing conservation covenants. We have worked very hard to meet each and every one of these criteria, said Mr. Ward and are entitled to the use this site. He added that this is not a de facto city park; it is private property and has been on the market since 1998. If the neighbors wanted to use it as a park, they could have purchased it at any time. It is not a remote, pristine area, by any means.

What about the concern raised earlier about building on the wetland, and water in the crawlspaces? the Examiner asked. Mr. Stonex, Applicant's engineering consultant, replied that one of the things the County has done since Deer Run was developed is to put in place much more stringent stormwater engineering standards. Paul Knox the County Engineer on this application drew the Examiner's attention to Condition A-27, which addresses this issue.

Open Record Period:

On September 23, 2004 David Ward submitted the Applicants response to the question about off site mitigation (Ex. 51). The issue was raised by Mr. Karpinski in reference to the original proposal to protect a large Oregon white oak in Battle Ground. The oak tree proposed for mitigation is located northeast of central Battle Ground along NE 132nd Avenue (North Parkway) within Phase II of the Oak Meadows Planned Unit Development. The oak is shown on the plat within "tract A" adjacent to lot 5. The preliminary plat was approved in March 2002. There are no conditions of approval relating to this oak tree. The Oak Meadow Applicant is apparently beginning the process of revising the plat for Oak Meadows which will increase tract A from 3, 28 SF to 5,000SF.

The oak is not subject to protection as a result of this approval and there is nothing to prevent the owner from further amending the plat to remove Tract "A" in its entirety and replacing it with buildable lot(s). Similarly phase II could be sold and the new owners have a different idea about the tract. Mr. Karpinski raised a question about the oak being potentially in the future right of way of a wider Parkway. Mr. Ward reports that Oak Meadows had this trees surveyed, so that the exact location of the tree is known. The tree is not within any right of way, either existing or proposed.

The second issue was whether the oak was going to be protected. The PUD is vested to the development regulations in effect in 2002 which is prior to any regulation not yet enacted. Additionally the current draft version of the Battle Ground habitat conservation ordinance does not protect Oregon white oaks. In conclusion the Applicant is asking for approval of their Habitat Conservation Plan as originally submitted.

On September 27, 2004 David Howe, the County's Habitat biologist indicated that he and Carl Dugger of WDF & W) have reviewed the additional information and he finds that the proposal continues to comply with the HCO. (See Exhibit 51)

On September 30, 2004 John Karpinski submitted his reply (Exhibit 52). Once you cut through the colorful invective these are Mr. Karpinski's points:

- The Applicant cannot provide the alternative mitigation tree and that the tree they are providing is already being used by the same developer as an amenity for a different project. In other words the tree the Applicant proposes to save is already saved as a project amenity.
- Because WAC 365-190-080(c)(ii) "suggests" the use of PHS (which lists Oregon White Oak) and has made a request to that affect of Battle Ground, no credit should be given for a tree that should already be protected.
- The oak is close enough to North Parkway that minor pruning will be allowed under the covenant protecting it. The scope of future road widening is unclear and the applicant has not met his burden of proof, presumably that the Oak will be adequately protected.
- Refraining from killing additional trees is improper mitigation. The Applicant's habitat conservation plan is risky because foundations will be next to the trees. The Applicant's plan promoters are suggesting that at least 95% of the oak tree canopy will be preserved by retaining onsite trees and the Battle Ground trees. Mr. Karpinski's point is that if the 9 saved trees and transplanted trees on site all die, the Battle Ground trees only preserves 70% of the canopy.
- The Applicant's consultants never actually say that the plan will work. The Applicant has the burden of proof to show that the plan will work and that burden has not been met.

On October 7, 2004 Mr. Ward submitted his final rebuttal and the record was closed (Exhibit 53). His general conclusion is that the information submitted by the Applicant on September 23, 2004, demonstrates that the Battle Ground oak is sufficient mitigation. The County and WDFW concur in this conclusion.¹ Here are his points in support of these conclusions:

- The creation of Tract “A” and the preservation of the Battle Ground oak were not conditions of approval for the Oak Meadows PUD. Instead, Tract “A” was created to preserve this tree so that it could be used for mitigation at Windmill Terrace. Further, the Applicant recently enlarged Tract “A” from 3,291 sft to 5,000 sft to benefit the tree.
- Mr. Karpinski’s assertion that the Applicant is attempting to “double dip” with respect to mitigation is incorrect. The Applicant is simply employing the commonly accepted method of off site mitigation. Off site mitigation is the primary method of wetland mitigation within Clark County.
- The issue before the Examiner was whether the tree was otherwise protected. The Applicant has provided additional background on the Battle Ground oak demonstrating that without the protections offered in the HCP, it remains unprotected. WDFW and the County now agree that the tree should be protected and qualifies as mitigation for the HCP.
- Urban Trees – Battle Ground Critical Areas Ordinance: The analysis provided by the Applicant on September 23, 2003, demonstrates that the Battle Ground CAO currently proposed would not protect the Battle Ground oak.
- Nothing mandates the use of the WDFW PHS definitions and recommendations. Instead, the regulation encourages cities to decide on their own that “habitats and species of local importance” qualify for protection, and states that Cities may utilize the WDFW PHS definitions and recommendations if they so choose. Battle Ground has satisfied their obligations under state law. (See Brian Carrico email correspondence - Exhibit B)
- Road Widening: The oak’s location is shown on the face of the plat. The scope of the roadway improvements to North Parkway Avenue are also shown on the face of the plat. The trunk of the tree is not within any existing or proposed right of way. The Battle Ground oak is enormous. See Exhibit “C” for pictures. The tree is 56 inches in diameter at breast height. It has a 79 ft. drip diameter and a 4,900 sft canopy. Its limbs extend some 40 feet out from the trunk. Some of the lower limbs come close to the edge of the North Parkway right of way. The Applicant is simply seeking to clarify that these limbs may need to be trimmed for pedestrian access along the sidewalk and perhaps sight distance

¹ See Exhibit 51 stating, “Therefore, staff finds the original proposal still complies with the HCO, subject to the conditions of approval.”

- The HCP: The Applicant's consultants, the County and WDFW, are confident that the plan can and will work. The off-site oak is being protected to ensure that the habitat functions and values of the on-site trees are "substantially maintained" from day 1. The plan proposes to retain trees, relocate trees and plant new trees on-site. However, the existing oaks are in poor condition and it will take time for them to "crown out" and develop a large and healthy canopy. The newly planted oaks will be 5 to 8 foot high saplings that will take time to grow and mature. The Applicant has every expectation that once the existing trees are required to compete for light that they will become healthy. The Applicant expects that in 10 years the overall canopy coverage of oaks on-site will triple.
- Conclusion on HCP: Mr. Karpinski repeatedly asserts that the Applicant's HCP is "risky." Four licensed professionals in the field of biology have concluded that the plan is ultimately feasible and satisfies the HCO criteria. The Curriculum Vitae for Mr. Naglich², and Ms. McGrath³ from ELS are in the record. Further, the Curriculum Vitae for Mr. Howe⁴, the County's biologist is also in the record. These experts all agree that the plan adequately mitigates the impacts to the on site oaks and should be approved by the Examiner. In contrast, Mr. Karpinski provides no expert testimony to substantiate his attacks on the Applicant's plan.

FINDINGS

The Hearing Examiner adopts as his own and incorporates by reference the findings and conclusions contained in the October 8 , 2003 Staff Report and Recommendation (Exhibit # 27), as modified on August 25, 2004 by the revised Staff Report (Exhibit 41) and except to the extent expressly modified or supplemented herein. Only the issues and the approval criteria raised in the course of the application, at the hearing or before the close of the record, are discussed in this section. Any standard that might be deemed to be an applicable approval criteria but which was not raised by staff, the Applicant or a party to the proceeding has been waived as a contested issue, and no argument with regard to any such issue or criterion can be raised in any subsequent appeal. Criteria not discussed specifically in these findings below are deemed to be met.

Only the major issues, errors in the development proposal, and/or justification for any conditions of approval are discussed below. All other aspects of this proposed development comply with the applicable code requirements, and, therefore, are not discussed below.

LAND USE:

Finding 1 – Comprehensive Plan, Zoning and Current Land Use

² Exhibit 48

³ Exhibit 47

⁴ Exhibit 44

Compass	Comp Plan	Zoning	Current Land Use
Site	UM	R-18	Vacant
North	UM	R-18	Mobile Home Park
East	UM	R-18	Single-Family Subdivision
South	UM	R-18	Windmill Terrace Phase 1
West	ML	ML	Industrial Building

Finding 2

CCC 18.406.020(H)(3)(a)(2) requires townhouse developments that include a subdivision to receive approval of a site plan demonstrating how the proposal complies with applicable requirements. The Applicant has submitted site plan information on the proposed preliminary plat. Based on the submitted items, the Examiner accepts staff's conclusion that the proposal can comply with the applicable requirements. The site plan information, however, likely will not be shown on the final plat. Therefore, prior to final plat approval the Applicant shall submit a separate site plan showing compliance with all conditions of approval. (See Condition A-1)

Finding 3

The lot sizes shown on the proposed plat exceed the required minimum lot size of 1,800 square feet. The dimensions shown, however, do not match up with the lot sizes shown on the plat. Therefore, the Applicant shall revise the final plat to show accurate lot sizes and dimensions. (See Condition A-2)

Finding 4

According to Table 18.406.020(H)(3)(b), the minimum density allowed is 12 units per acre and the maximum density allowed is 18 units per acres. The proposed density calculations are as follows:

Approximate site area: 2.06 acres

Approximate public road right-of-way: .33 acres

Maximum density allowed: (2.06 acres – .33 acres) X 18 units = 31 units

Minimum density allowed: (2.06 acres – .33 acres) X 12 units = 20 units

The Applicant is proposing 26 units, which therefore complies with the density requirements of Table 18.406.020(H)(3)(b). Per CCC 18.406.020(H)(3)(b), these calculations shall be recorded on the final plat and shown on the approved site plan. (See Condition A-3)

Finding 5

CCC 18.406.020(H)(3)(d) requires that no more than 40% of the total square footage of the front façade of each unit may be garage door area. Based on the elevations submitted (Ex. 9, Tab 7), the proposed units are in compliance with this requirement. In order to further ensure compliance, a note stating that "No more than 40% of the total square footage of the front façade of each unit may be garage door area" shall be recorded on the final plat and shown on the approved site plan. (See Conditions A-4 and D-1)

Finding 6

According to CCC 18.406.020(H)(3)(a)(6) developments meeting the requirements of the townhouse section are exempt from review under CCC 18.402A (Site Plan Review) provided all applicable standards are met. Therefore, separate site plan review is not required, but the proposed development shall comply with the applicable standards contained in CCC 18.402A. (See Condition A-5)

Finding 7

The Applicant is proposing 2, 3, and 4-plexes that will be similar to what was approved in Phase 1. As specified in CCC 18.406.020(H)(3)(e)(1), one parking space is required per unit. The Applicant is proposing either one or two car garages for each unit, as well as the required 18-foot setback for each garage. Therefore, the parking requirement for townhouse developments has been satisfied.

Additional parking is also proposed in a small lot to the west of the cul-de-sac bulb. This parking area is not required by code, but is proposed as an amenity for the residents. Because it is not required parking, standards that apply only to required parking do not apply to this parking lot. Standards that apply to any and all parking do apply to this parking lot.

Finding 8

CCC 18.402A.060(A)(8) requires that all parking and loading spaces and related access drives and maneuvering areas be paved. The proposed site plan does not show the surfacing for the parking and maneuvering areas. Therefore, the Applicant shall revise the site plan to clearly identify paving for the parking and maneuvering areas. (See Condition A-6)

Finding 9

CCC 18.402A.060(A)(10) requires wheel stops and curbs for parking lots. The Applicant has not proposed any wheel stops or curbs for the proposed parking lot. Therefore, the Applicant shall revise the site plan to include wheel stops and/or curbs as required by CCC 18.402A.060(A)(10). (See Condition A-7)

Finding 10

Tract E, which contains the proposed parking lot, shall be conveyed to a Homeowner's Association for ownership and maintenance of the facility. (See Condition A-8)

Finding 11

In order to comply with Table 402A-1 the Applicant has proposed a 20-foot, L3 landscape buffer along the west property line of Lots 15-18. CCC 18.402A.050(B)(3) requires trees and shrubs, and requires groundcover plants to cover the remainder of the landscaped area. The Applicant is not showing groundcover plants over the entire 20-foot proposed buffer. Therefore, the Applicant shall revise the landscape plan so that groundcover completely covers the remainder of the buffer area along the west property line of Lots 15-18. (See Condition A-9)

Finding 12

The Applicant is proposing a 6-foot sight obscuring fence that meets the F2 standard along the western side of the proposed stormwater facility in order to meet the L3 landscaping standard. CCC 18.402A.050(B)(3) does allow a fence to be substituted for shrubs, but the trees and groundcover are still required. The Applicant has provided groundcover in this area, but no trees are shown. Therefore, the Applicant shall revise the landscape plan to include trees in this area. (See Condition A-10)

Finding 13

CCC 18.402A.050(E)(3) requires parking areas that contain at least seven parking spaces to contain landscape islands equally distributed at a ratio of 1 island per 7 parking spaces. Neither the proposed site plan nor the proposed landscape plan include any landscape islands. Therefore, the Applicant shall revise the site plan and landscape plan to include landscape islands for the proposed parking lot. These landscape islands shall comply with the standards of 18.402A.050(E)(3)&(4). (See Condition A-11)

Finding 14

CCC 18.402A.050(F)(2)(a) requires that shrubs be supplied in a minimum of five (5) gallon containers or equivalent burlap balls with a minimum spread of 30 inches in order to meet the L3 buffer requirement. The proposed landscape plan does not include this information. Therefore, the Applicant shall revise the landscape plan to show compliance with this requirement. (See Condition A-12)

Finding 15

Table 18.311.031 requires a minimum 20% of the proposed site to be landscaped to at least an L1 landscaping standard. The proposed landscaping plan does not comply with this requirement. Therefore, the Applicant shall revise the landscape plan so that a minimum 20% of the site is landscaped to at least an L1 standard. (See Condition A-13)

Finding 16

With conditions of approval, the proposed land division will make appropriate provisions for the public health, safety, and general welfare of the community. Extension and connection of proposed residences to public sewer and water, as well as treatment of any future increase of stormwater runoff, will be provided, to protect groundwater supply and integrity. Impact fees will also be required to contribute a proportionate share toward the costs of school, park and transportation provisions, maintenance and services.

HABITAT:

Finding 1

After several field visits and staff meetings with the Applicant and neighbors, the Applicant has applied for a Habitat Permit (HAB 2004-00147) under protest and submitted a habitat mitigation plan and revised plat map. Staff has reviewed the revised plat and Exhibit 35, the Applicant's "Oregon White Oak Habitat Conservation Plan," for compliance with the Habitat Conservation Ordinance (HCO) and again concerning the feasibility of the off-site mitigation (Exhibit 51). According to the mitigation plan, the Applicant will be implementing a

combination of oak tree preservation,⁵ transplanting, planting of additional oak trees on the site, and off-site oak tree functional replacement.

The Applicant has demonstrated that the mitigation plan will “substantially maintain the level of habitat functions and values” currently present on the property (CCC Chapter 13.51.080(2)(a)). Specifically, maintenance or replacement of the structural functions⁶ of the oaks will be achieved through transplanting or off-site oak preservation. As identified in the mitigation plan, transplanting is only being pursued for oaks exhibiting a high likelihood of survival. Furthermore, the off-site oak preservation area has been shown to be structurally and functionally equivalent to the 11 oaks proposed for removal for this development; and is currently not protected under the HCO. Finally, the Applicant proposes to plant additional oak trees on the site in order to enhance future wildlife habitat in the area. The Examiner accepts the Staff finding that collectively the mitigation strategy as a whole adequately complies with CCC Chapter 13.51, subject to the following conditions of approval (see Conditions below).

Finding 2 - The Applicant’s Protest

As indicated in past staff findings (see Exhibit 29), there is an Oregon white oak woodland present on the property that meets the WDF&W definition of Priority Habitat. Specifically, the latter part of the WDF&W Priority Habitats and Species (PHS) definition reads:

...in urban or urbanizing areas, single oaks or stands < one acre may also be considered a priority [habitat] when found to be particularly valuable to fish and wildlife habitat. (emphasis added)

Since the site is zoned R-18, an urban zoning designation, this portion of the PHS definition becomes applicable. Hence, single oaks or small stands such as this can qualify as Priority Habitat if significant wildlife value is ascertained. In staff’s best professional opinion, this stand conforms to this definition because of its importance to local wildlife in the urban area. Regardless of the Applicant’s “protest” there is no evidence to the contrary.

The county and WDF&W report having visited the site several times over the past year. On every occasion multiple wildlife species were observed in the oak woodland.⁷ Many of these species are not common in the surrounding area, but are attracted to this woodland habitat⁸

⁵ The Applicant is also protecting 5 Oregon ash trees adjacent to the stand, as recommended by the Washington Department of Fish and Wildlife (WDF&W). Per the WDF&W letter (Exhibit 32), the adjacent ash trees will “help retain some of the [habitat] diversity of the site” after development.

⁶ Structural functions of the trees include, but are not limited to wildlife hiding, nesting, perching, roosting, and foraging areas; erosion control, large-woody debris recruitment, temperature moderation, nutrient cycling, and water filtration and retention.

⁷ County staff observed rufous-sided towhees, black-capped chickadees, Columbian black-tailed deer (a Priority Species), dark-eyed juncos, evidence of pileated woodpecker foraging, Eastern gray squirrels, American crows, red-tailed hawk, bushtits, song sparrow, house finch, and American robin.

⁸ The woodland is also composed of adjacent Oregon ash, which contributes to the habitat diversity of the stand.

because of its unique habitat structure, foraging, and nesting opportunities. Staff observed several cavities that provide nesting and/or foraging habitat, acorns that provide unique and abundant food sources, and a canopy structure that provides valuable perching, nesting, and hiding habitat. Therefore, this woodland does provide valuable wildlife habitat.

Although no Priority Species were observed on the site, nothing in the PHS definition indicates a Priority Species needs to be present in the oak stand in order to be deemed Priority Habitat. The Executive Summary of WDF&W's Management Recommendations for Washington's Priority Habitats—Oregon White Oak Woodlands, January 1998 - states that urban oaks less than one acre in size may be deemed Priority Habitat if they are:

...found to be particularly valuable to fish and wildlife (i.e., they contain many cavities, have a large diameter at breast height (dbh), are used by priority species, or have a large canopy).

The parenthetical statement is an example with no implications on the official PHS definition. Just because the stand may not contain Priority Species⁹ doesn't disqualify it from being "particularly valuable to fish and wildlife," as stated in the official PHS definition.¹⁰ In urban areas, the oak stand merely needs to demonstrate value to fish and wildlife.

Even if the examples in the PHS definition were the official definition, the site would still qualify as Priority Habitat. The Applicant's own analysis indicates there are 4 large oaks greater than 20 inches diameter in the stand, with many medium to small diameter trees¹¹ also present (see Exhibit 31). Furthermore, the stand has been documented by county staff to contain multiple wildlife species, a Priority Species (Columbian black-tailed deer), and evidence of cavity excavation. All of these site characteristics are cited in the PHS definition example. So even though the intent of oak PHS definition is to protect habitat critical to the survival of a broad array of wildlife species and not just those stated in the example, this

⁹ It should be noted that a Priority Species (Columbian black-tailed deer) is present in the stand, as observed by county staff during a December 5, 2003 site visit. Additionally, deer scat has also been found in the stand.

¹⁰ *Stands of pure oak or oak/conifer associations where canopy coverage of the oak component of the stand is [greater than or equal to] 25%; or where total canopy coverage of the stand is < 25%, but oak accounts for at least 50% of the canopy coverage present. The latter is often referred to as oak savanna. In non-urbanized areas west of the Cascades, priority oak habitat consists of stands [greater than or equal to] ...1 acre in size. East of the Cascades, priority oak habitat consists of stands [greater than or equal to]... 5 acres in size. In urban or urbanizing areas, single oaks or stands < 1 acre may also be considered a priority when found to be particularly valuable to fish and wildlife.* The official definition does not mention Priority Species at all, nor does it mention any examples.

¹¹ Although some of the oak trees are smaller in diameter (8-12"), they are not small in height or stature. All of the oak trees present on the site represent the average oak height at maturity known to occur in a densely stocked stand where competition with other trees can retard tree diameters and other structural characteristics. In this case, the growth form of some of these trees is tall and narrow, which still yields quality wildlife habitat in the form of hiding, nesting, perching, and foraging areas, among other habitat functions.

argument is further refuted due to the existence of Priority Species, large diameter trees, and observable cavities in the stand.

The Applicant may argue that the Oregon white oak woodland is cut-off from other habitats by existing agriculture, roads, and development. Despite of the habitat's relative isolation from other habitats, the stand is not important to wildlife. However, this does not diminish the importance of the oak to the species currently present on the site. The un rebutted testimony is that multiple wildlife species utilize this stand regardless of its isolation, so the separation of the stand from adjacent habitats is irrelevant. Furthermore, the isolation argument reinforces the need to protect this remnant patch of oak habitat on the site, as these species may not find suitable unoccupied habitats elsewhere if they are displaced. The wildlife presence observed on the property can only be retained as long as the oak woodland is protected or oak mitigation is employed as identified in Exhibit 35.

Finding 3 - Approval Criteria

The HCO requires all development to "substantially maintain the level of habitat functions" currently present on the site (CCC 13.51.080(2)(a)). The habitat functions of this Oregon white oak woodland include erosion control, precipitation attenuation, nutrient cycling, large-woody debris recruitment, organic matter input, hydrologic control, temperature moderation, acorn (mast) production, and wildlife habitat (i.e. thermal, hiding, roosting, breeding, and nesting habitat). Furthermore, CCC Chapter 13.51.080(4) states, "Clark County shall consult with the Department of Fish and Wildlife and shall substantially follow resulting recommendations of the DFW." WDF&W has recommended protection of the Oregon white oak woodland (see Exhibit 32).¹²

As a result, the Applicant has revised the plat and submitted a habitat mitigation plan in order to protect and/or mitigate the Oregon white oak habitat on the property. The revised plat and mitigation plan both comply with the HCO, subject to the following conditions of approval.

The Applicant shall implement the "Oregon White Oak Habitat Conservation Plan," submitted by Ecological Land Services, Inc. and dated June 24, 2004 (Exhibit 35), except as amended herein. (See Condition E-3) If the Applicant can demonstrate that the HCP substantially maintains the level of habitat functions and values, then the permit must issue. The Applicant asserts, and the County and WDFW agree that the approval criteria have been met and that the permit should be approved. Exhibit 45 is the Applicant's opening brief. A matrix entitled, "Existing Conditions and Projected Conditions with Habitat Conservation Plan Implemented for Windmill Terrace Phase 2" is attached to the brief as Exhibit "A." The matrix demonstrates that the habitat functions and values of the trees on-site today will be substantially maintained and even increased.

Conditions of approval A-15, E-3 -E6 Mr. ensure survival of 80% of the planted vegetation on site for three years. Further, the Applicant must enter all of the trees, both new and old, on the

¹² WDF&W has been consulted regarding the Applicant's proposed oak tree mitigation plan, and concurs with county staff that this plan adequately preserves and/or mitigates the habitat functionality present on the site.

site and off, into a Habitat Conservation Covenant. Pages 12 and 13 of the HCP discuss this requirement and detail how the requirement to preserve all of these trees. These are the minimum standards. As noted at the hearing, the Applicant anticipates that the on-site trees will flourish once the competing conifers are removed. Here are the remaining conditions of approval:

- The Applicant shall minimize grading (cuts or fills) within the dripline of retained trees to what is absolutely necessary to construct the subdivision. (See Condition E-4)
- All planting and transplanting activities shall take place prior to Final Plat approval, unless otherwise postponed through the establishment of a performance/maintenance bond, escrow account, or other financial guarantee acceptable to the Planning Director. (See Condition A-14)
- The Applicant shall ensure an 80% survival rate for all planted vegetation after three (3) growing seasons. (See Condition E-5)
- All cut Oregon white oak trees shall be retained on the site or on the off-site wetland mitigation area as downed woody debris. Discretion will be left up to the Applicant regarding specific placement of tree boles. (See Condition E-6)
- The Applicant shall enter all Oregon white oak trees that are retained, transplanted, or planted on the site, and the off-site oak preservation area into a Habitat Conservation Covenant prior to Final Plat approval. (See Condition A-15)

Finding 4 - Mitigation

40.440.020(A)(3) or 13.51.080(3) contains the accepted mitigation measures. In his final rebuttal (Exhibit 53) the Applicant addresses each individually and argues that he satisfies the core criteria of substantially maintaining the habitat functions and values of the trees on site and also addresses and employs each of the mitigation measures provided for in the County's code. The Applicant's mitigation plan satisfy HCO as follows

- a. *Avoiding the impact all together by not taking a certain action or parts of an action;*
Mr. Karpinski criticizes the Applicant's proposal to refrain from cutting a portion of the trees on the site and mitigate the impacts of the cut trees both on and off site,¹³ yet this is specifically what the HCO provides for. As a result of the retention of the nine on-site oaks, the Applicant was forced to redesign the plat and remove one lot.
- b. *Exploring alternative on-site locations to avoid or reduce impacts of activities;*

¹³ "Refraining from killing additional trees is improper mitigation." September 30, 2004 letter from Mr. Karpinski, page 2.

The Applicant is employing significant on site mitigation, including the preservation of nine oak trees and five ash¹⁴ trees in their current locations, the relocation of three oak trees on site and the planting of thirty-three new oaks on site.

- c. *Preserving important vegetation and natural habitat features by establishing buffers or by limiting clearing or alteration;*
Again, the Applicant is proposing to preserve nine oak trees and five ash trees in their current locations and relocate three oaks. The Applicant will then provide appropriate conservation covenants to ensure the long term protection of all the trees. Further, Condition of Approval E-4 requires that the Applicant limit clearing and grading around the drip line of the trees.
- d. *Enhancing, restoring or replacing vegetation or other habitat features and functions. In riparian areas, this may include buffer averaging as specified in Section 13.51.090(2)(c);*
This section gets back to the core of the issue, which is whether the Applicant's proposal "Substantially maintains the level of habitat functions and values." The Applicant is enhancing the on-site condition of the oaks by removing competing conifers and by planting thirty-three new oaks on site. See the matrix entitled, "Existing Conditions and Projected Conditions with Habitat Conservation Plan Implemented for Windmill Terrace Phase 2" attached to the Applicant's opening brief as Exhibit "A." The matrix demonstrates the efforts made by the Applicant to enhance, restore and replace the habitat functions and values of the oaks on-site.
- e. *Managing access to habitat areas;*
The Applicant will execute a conservation covenant which will restrict the activities around the trees to the extent necessary to protect them.
- f. *Seasonal restriction on construction activities;*
The Applicant will first selectively thin the site this fall to allow the oaks to become accustomed to the additional light they currently do not enjoy. The Applicant will then transplant the trees in 2005, and postpone construction in the proximity of the transplanted oaks until May 2006, to allow them to become situated in their new locations.
- g. *Implementing best management practices;*
The HCP was developed in consultation with certified biologists and arborists and will employ best management practices. See page 8 of the HCP for more information.
- h. *Monitoring or review of impacts;*
- i. *Establishing performance measures or bonding;*
Subsections h. and i. are interconnected. The Applicant has established detailed performance standards. Those standards have been clarified and strengthened by the County through conditions of approval. The Applicant has prepared a monitoring plan to ensure the performance standards are met.
- j. *Establishing conservation covenants.*
The proposed conservation covenants will provide for the long term protection of the oaks both on site and off.

¹⁴ Ash trees are not a protected species. The Applicant is retaining these trees per the County's request.

In conclusion I find based on the very extensive record that with the Staff's recommended conditions of approval the Applicant will satisfy the requirements of the County's Habitat Conservation Ordinance.

WETLANDS:

Finding 1

Compliance with CCC 13.36 will ensure that the project has no significant environmental impacts to wetlands (see SEPA Determination).

Finding 2

Staff has previously accepted the wetland boundaries under the approval of Phase 1. The wetland rating applied during the previous review, however, was not correct. The previous determination that the wetland meets Category 4 criteria was based only on the fact that the wetland is isolated. Though the wetland is isolated and only 0.30 acres in total area, it is forested. Per CCC 13.36.310 (3d), forested wetlands in the Urban Area meet Category 3 criteria. Therefore the site contains a Category 3 wetland with 60-foot Type A buffers.

Finding 3

The Applicant proposes to fill the entire wetland and mitigate for the impacts off-site at a location east of Battle Ground on Salmon Creek. CCC 13.36.420 (2a) requires wetland mitigation to be located within the same watershed as the proposed impacts. Clark County GIS maps the wetland in the Whipple Creek watershed, however based on the evidence of several on-site inspections by the Staff, the un rebutted evidence shows that the wetland is isolated and does not discharge to any creek. The site is located in a topographic saddle between Whipple Creek (to the north and northwest) and Salmon Creek (to the northeast, east, south and southwest). The Examiner accepts the Staff conclusion that the topographic isolation of the site and subsequent watershed ambiguity provides a sufficient basis to allow the mitigation to occur in the Salmon Creek watershed.

Finding 4

The Applicant proposes to enhance 1.0 acre of existing Category 4 wetland pasture to meet Category 3 criteria to replace 0.30 acres of Category 3 forested wetland (refer to Exhibit 9, Tab 13). Enhancement ratios derived from CCC 13.36.420 (2d) require a 5:1 ratio to replace Category 3 wetlands with the enhancement of Category 4 wetlands to Category 3. The Final Enhancement/Mitigation plan must be revised to meet the required 5:1 enhancement ratio. (See Condition A-17). There was an issue raised by Mr. Karpinski at the hearing concerning the fact that the buffer area was not being mitigated. As the testimony indicated the buffer was necessary on site to protect an isolated wetland in a residential zone. Mr. Ward indicated in his rebuttal at the hearing that an extra acre is being provided for the buffer in Salmon Creek - in any event that mitigation is subject to review and approval consistent with the County standards prior to the release of the wetland protection covenant on site (See Finding 5).

Finding 5

When the required performance guarantee for completion of the required wetland mitigation has been provided, protection of the on-site wetland will no longer be required. Therefore, the

County may release the existing conservation covenant (AF#3185538) through the process described in Exhibit 15 upon Final Wetland Permit approval. At the hearing Mr. Karpinski expressed some consternation that the covenant can be released through an administrative decision of the Planning Director and not through a separate public hearing or as a legislative matter by the Board of County Commissioners. I see no basis for disagreeing with County's Prosecuting Attorney opinion (Exhibit 15) that by the term of the covenant, the Planning Director may release it in exchange for enhanced mitigation consistent with the County's Wetland Ordinance.

Conclusion:

Based upon the development site characteristics and the proposed development plan, the proposed preliminary land division and preliminary wetland permit comply with the requirements of the Wetland Protection Ordinance PROVIDED that certain conditions (listed below) are met. Therefore, the requirements of the preliminary plan review criteria are satisfied.

TRANSPORTATION CONCURRENCY:

County concurrency staff has reviewed the proposed subdivision consisting of 19 Townhouse-Condo Units. The proposed development is located north of NE 139th Street, between Tenny and NE 10th Avenue. The Applicant's traffic study has estimated the weekday AM peak hour trip generation at 8 new trips, while the PM peak hour trip generation is estimated at 10 trips. The following paragraphs document two transportation issues for the proposed development.

Issue 1: Concurrency

The Applicant submitted a traffic study for this proposal in accordance with CCC 12.41.050(A) and is required to meet the standards established in CCC 12.41.080 for corridors and intersections of regional significance. The County's TraffixTM model includes the intersections of regional significance in the area and the County's model was used to evaluate concurrency compliance.

Finding 1 – Site Access

Level of Service (LOS) standards are not applicable to accesses that are not regionally significant; however, the LOS analysis provides information on the potential congestion and safety problems that may occur at the site access to the arterial and collector network. The access onto NE 139th Street appears to maintain acceptable LOS.

Finding 2 – Operating LOS on Corridors

The proposed development was subject to concurrency modeling. The modeling results indicate that the operating levels comply with travel speed and delay standards. The Applicant should reimburse the County for costs incurred in running the concurrency model. (See condition A-18)

Finding 3 – Intersection Operating LOS

The proposed development was subject to concurrency analysis for intersections of regional significance. The study reports a LOS E for the unsignalized intersection of NE 10th

Avenue/139th Street. A LOS E is an acceptable operating level for unsignalized County intersections where warrants are not met for a signal. The traffic study analysis indicates that warrants are not met for this intersection.

Concurrency Compliance

The proposed development complies with the Concurrency Ordinance CCC 12.41 subject to the mitigation situation described above.

Issue 2: Safety

Where applicable, a traffic study shall address the following safety issues:

- traffic signal warrant analysis,
- turn lane warrant analysis,
- accident analysis, and
- any other issues associated with highway safety.

Mitigation for off-site safety deficiencies may only be a condition of approval on development in accordance with CCC 12.05.230. This ordinance states that “nothing in this chapter shall be construed to preclude denial of a proposed development where off-site road conditions are inadequate to provide a minimum level of service as specified in Chapter 12.41 CCC or a significant traffic or safety hazard would be caused or materially aggravated by the proposed development: provided that the developer may voluntarily agree to mitigate such direct impacts in accordance with the provisions of RCW 82.02.020.”

Finding 4 – Turn Lane Warrants

Turn lane warrants are evaluated at unsignalized intersections to determine if a separate left or right turn lane is needed on the uncontrolled roadway. The Applicant’s traffic study analyzed the roadways in the local vicinity of the site to determine if turn lane warrants are met. Turn lane warrants were not met at any of the unsignalized intersections analyzed in the Applicant’s traffic study; therefore, mitigation is not required.

Finding 5 – Historical Accident Situation

The Applicant’s traffic study analyzed the accident history at the regionally significant intersections; however, all of the historical accident rates at these intersections are below 1.0 accidents per million entering vehicles. Therefore, mitigation by the Applicant is not required.

TRANSPORTATION:

Finding 1- Circulation Plan

The purpose of a circulation plan is to ensure adequate cross circulation in a manner which allows subsequent developments to meet these standards, and to provide a mechanism for integrating various streets into an efficient and safe transportation network. The evidence submitted with this application shows that there is no feasibility of additional cross circulation roads within and in the vicinity of this development that could reasonably accomplish this purpose.

Finding 2 - Roads

The Applicant proposes to extend NE 7th Court, an existing cul-de-sac constructed with the first phase of the project. The minimum improvements for this road in accordance with CCC 12.05A, Standard Drawing #15, include:

- A minimum width right-of-way of 46 feet
- A minimum width roadway of 26 feet*
- Curb and gutter
- Minimum sidewalk width of 5 feet

* The preliminary development plan shows a width of 28 feet, which is an acceptable alternative.

The Applicant proposes to remove the existing turnaround at the north end of NE 7th Court, and construct a permanent cul-de-sac approximately 240 feet to the north in accordance with CCC 12.05A, Standard Drawing #28, including a minimum pavement of 34.5-foot radius, rolled curb and gutter, and a 5-foot wide thickened sidewalk having a minimum radius of 40 feet. The final cul-de-sac will be approximately 520 feet long, which does not exceed the maximum length requirements provided in CCC 12.05A.280.

Extension of NE 7th Court will require realignment of the existing roadway and underground utilities, and portions of the existing improvements constructed with the project's first phase will need to be removed. The proposed roadway connection will also result in an irregular-shaped right-of-way. The connection of the proposed roadway to the existing roadway is an area of concern to staff. The proposed point of connection will occur at a point where an existing private drive meets the existing cul-de-sac bulb. The Applicant has submitted additional information in support of Road Modification Request EVR2003-00046 (Ex. 9, Tab 13) which provides a conceptual horizontal and vertical alignment for the proposed connection. On the basis of this conceptual plan, staff finds that the proposed roadway connection is feasible. The manner in which existing improvements constructed with the first phase of the project will be removed or modified, and that new construction will be matched to the remaining facilities shall be determined during review and approval of the final construction plans. The final plans shall clearly address the measures taken to preserve and maintain essential services to the existing home sites including, but not limited to, storm and sanitary sewer, mail delivery, and access to the existing lots by residents and emergency vehicles during construction of the Phase 2 improvements. (See condition A-24)

Finding 3 – Access

All driveways shall comply with the Transportation Standards and the requirements of the Fire Marshal. The Fire Marshal's requirements shall take precedence when they are more stringent than the Transportation Standards.

Joint driveway accesses are proposed for Lots 11-12 and 15-17. Under the provisions of CCC 12.05A.275, a total of three legal lots may use a joint driveway to access a public or private road. Therefore, Lot 18 shall not be allowed to access NE 7th Court from the joint driveway serving Lots 15-17. (See condition A-25)

Finding 4 - Road Modifications

- a. **Approval Criterion** - If the development cannot comply with the Transportation Standards, modifications may be granted in accordance with the procedures and conditions set out in CCC 12.05A.660. The request shall meet one (or more) of the following four specific criteria:
- (i) *Topography, right-of-way, existing construction or physical conditions, or other geographic conditions impose an unusual hardship on the Applicant, and an equivalent alternative, which can accomplish the same design purpose, is available.*
 - (ii) *A minor change to a specification or standard is required to address a specific design or construction problem, which, if not enacted, will result in an unusual hardship.*
 - (iii) *An alternative design is proposed which will provide a plan equal to or superior to these standards.*
 - (iv) *Application of the standards of the Transportation Standards to the development would be grossly disproportional to the impacts created.*
- b. **Modification Requests** - The Applicant has requested the following road modification:
- The Applicant is requesting an administrative road modification to modify the NE 7th Street road cross section from a standard crown section to a “shed” section, which will allow stormwater runoff from the entire proposed roadway extension to drain to the west gutter line, where it can be more conveniently collected by the stormwater collection system installed with the first phase of the project. The Applicant believes that this modification complies with the criterion (i).

Applicant's comments

The northern portion of the existing road was constructed with a shed section. Allowing the proposed modification will eliminate the need for a transition from the existing shed section to a crowned section on the proposed road, which will simplify the stormwater collection system. In response to staff's request, the Applicant has supplied additional information demonstrating at a conceptual level the manner in which stormwater from the proposed roadway can be routed into the existing storm sewer collection system.

Staff's Evaluation

Staff finds that the Applicant has provided information in sufficient detail to determine that the proposed road modification can feasibly accomplish the intended purpose.

Examiner's decision - Based on the findings and the provisions of the Transportation Standards, the Examiner Approves of the requested modification since the criterion as described in Section CCC 12.05A.660(1)(a)(iii) is met.

Finding 5 – Bicycle / Pedestrian Circulation

All sidewalks, driveway aprons, and road intersections shall comply with the Americans with Disabilities Act.

Sidewalks along the frontage of residential lots shall be constructed prior to issuance of occupancy permits. (See Condition C-1)

The Applicant shall construct the thickened sidewalk along the cul-de-sac frontage of NE 7th Court and that portion of the frontage on Tract B required to transition from the existing to proposed roadway. (See Condition A-26)

STORMWATER:

Finding 1 – Applicability:

Stormwater and Erosion Control Ordinance CCC 13.29, adopted July 28, 2000, apply to development activities that results in 2,000 square feet or more of new impervious area within the urban area; the platting of single-family residential subdivisions in an urban area; and all land disturbing activities, except those exempted in Section 13.29.210.

The project will create more than 2000 square feet of new impervious surface, involves platting of single-family residential subdivision, and it is a land disturbing activity not exempted in section 13.29.210. Therefore, this development shall comply with the Stormwater and Erosion Control Ordinance, CCC 13.29.

If stormwater runoff treatment and control is proposed to be achieved at an existing facility, one of the following conditions shall apply:

1. The existing facility shall have been approved and constructed in compliance with a previous stormwater ordinance, the approval of which included the capacity to treat and control the runoff from this activity, or
2. The existing facility shall have been approved and constructed in compliance with the current stormwater ordinance with capacity to treat and control the runoff from this activity, or
3. The existing facility shall be upgraded to comply with the current stormwater ordinance for the treatment and control of the runoff from this activity and from all other sources using the same facility.

Finding 2 – Stormwater Proposal:

The Applicant proposes to grade the site to provide positive drainage from each of the proposed lots to the street, where flows will be conveyed in the street gutter to an existing catch basin located in the existing cul-de-sac. Runoff will then be discharged to an existing biofiltration swale and detention pond which will be modified to comply with the current stormwater ordinance (CCC 13.29). The existing pond structure will be modified to control flows leaving the site to not exceed one-half of the predevelopment peak flow rate for the 2-year, 24-hour storm event, and not exceed the predevelopment peak flow rate for the 10-year, 24-hour and 100-year, 24-hour storm events. The existing and proposed facilities are privately owned and maintained.

Finding 3 – Site Conditions and Stormwater Issues:

Onsite soils are poorly suited to infiltration, so the Applicant's proposal to use stormwater detention to manage runoff from the site is warranted. The existing stormwater facility was

designed to the standards of the previous Stormwater and Erosion Control Ordinance, CCC 13.25.

County standards require that all lots within the urban area to be designed to provide positive drainage from bottom of footings to an approved stormwater system (CCC 13.29.310(A)(8)). (See Condition A-27)

A small private storm sewer is proposed to collect and convey the roof runoff from Lots 15-18 in the site's northwest corner. Otherwise, the Applicant is proposing to use overland flow over private roads and street gutters to collect and convey flows from all the new lots. Stormwater running off from Lots 11 and 12 at the site's northeast corner may have to travel as far as 400 feet before entering an underground pipe system. The Applicant is required to comply with the requirements of CCC 13.29.310(D). Therefore, the Applicant shall extend storm sewer collection pipes in the Phase 2 area of the site if it cannot be demonstrated that the proposed overland stormwater conveyance meets the requirements of CCC 13.29.310(D)(8). (See Condition A-28)

For private stormwater facilities, the final plat shall include a note specifying the party (ies) responsible for long-term maintenance of stormwater facilities. Easements or a covenant acceptable to the director shall be provided to the county for purposes of inspection of privately maintained facilities. The county may inspect privately maintained facilities for compliance with the requirements of this chapter. If the parties responsible for long-term maintenance fail to maintain their facilities to acceptable standards, the county shall issue a written notice specifying required actions to be taken in order to bring the facilities into compliance. If these actions are not performed in a timely manner, the county shall take enforcement action and recover from parties responsible for the maintenance in accordance with CCC 32.04.060. (See Condition A-29)

The Applicant shall prepare and submit a final stormwater report in compliance with the requirements of CCC 13.29.530. (See Condition A-30)

Conclusion:

Based upon the development site characteristics, the proposed stormwater plan and the requirements of the County's stormwater ordinance, staff concludes that the proposed preliminary stormwater plan (subject to Conditions A-27 to A-30) is feasible. Therefore, the requirements of the preliminary plan review criteria are satisfied.

FIRE PROTECTION:

Finding 1

Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process. (See Condition B-2)

Finding 2

Fire flow in the amount of 2,500 gallons per minute supplied for a 2-hour duration is required for this application. A utility review from the water purveyor estimates that the required fire flow is not available at the site. Fire flow is based on an 8,660 square foot, type V-N constructed building. Prior to final plat approval, the Applicant shall supply evidence that the required flow is available or receive approval from the Fire Marshal's office for an alternative method of meeting the fire flow requirement. (See Condition A-19)

Finding 3

Fire hydrants are required for this application. Either the indicated number or spacing of the fire hydrants is inadequate. The Applicant shall provide fire hydrants such that the maximum spacing between hydrants does not exceed 300 feet and such that no portion of any building exterior is in excess of 300 feet from a fire hydrant as measured along approved fire apparatus access roads. (See Condition A-20)

Finding 4

Unless waived by the fire district chief, fire hydrants shall be provided with appropriate 'storz' adapters for the pumper connection. (See Condition A-21)

Finding 5

The local fire district chief approves the exact locations of fire hydrants. As a condition of approval, the Applicant shall contact Fire District 6 at (360) 576-1195 to arrange for location approval. (See Condition A-22)

Finding 6

The Applicant shall provide and maintain a six-foot clear space completely around every fire hydrant. (See Condition A-23)

Finding 7

Fire apparatus access is required for this application. The roadways and maneuvering areas as indicated in the application adequately provide required fire apparatus access. The Applicant shall ensure that fire apparatus access roads maintain an unobstructed width of not less than 20 feet, an unobstructed vertical clearance of not less than 13.5 feet, with an all weather driving surface and capable of supporting the imposed loads of fire apparatus. (See Condition E-8)

Finding 8

Approved fire apparatus turnarounds are required for this project. The indicated provisions for turning around fire apparatus are adequate.

WATER & SEWER SERVICE:

Finding 1

The site will be served by Clark Public Utilities and Hazel Dell Sewer District. Letters from the above districts confirm that services are available to the site.

Finding 2

Submittal of a "Health Department Evaluation Letter" and acceptable "Health Department Well/Septic Abandonment Letter" (if required from the Health Department Evaluation Letter)

are required as part of the Final Construction Plan Review application. The Health Department Evaluation Letter serves as confirmation that the Health Department conducted an evaluation of the site to determine if existing wells or septic systems are on the site, and whether any structures on the site have been/are hooked up to water and/or sewer. The Department Well/Septic Abandonment Letter will confirm that all existing wells and/or septic systems have been abandoned, inspected and approved by the Health Department (if applicable). (See condition E-9)

IMPACT FEES:

Finding 1

Park (PIF), Traffic (TIF), and School (SIF) Impact Fees shall apply to the lots within this development. Per CCC 18.406.020(H)(3)(g) impact fees for townhouses on individual lots shall be charged at the multi family rate (PIF, SIF). The site is within Park Facility Plan District No. 10 which has a total PIF of \$1,120.00 per lot (Acquisition – \$799, Development - \$321), the Mt. Vista Traffic District which has a TIF of \$1,524.19 per lot, and the Vancouver School District which has a SIF of \$1,450.00 per lot. (See Condition B-3)

If a building permit application is received more than three years following the preliminary plat approval, the Impact Fees will be recalculated according to the then current ordinance. This shall be noted on the face of the final plat. (See Condition D-4)

SEPA DETERMINATION

The County reviewed the Applicant's submitted SEPA checklist and issued a Determination of Non-significance on October 8, 2003. Because the Applicant has submitted a habitat mitigation plan in accordance with the county's Habitat Conservation Ordinance, staff does not find that the original SEPA determination should be withdrawn.

DECISION

Based upon the proposed plan (identified as Exhibit 36), and the findings and conclusions stated above, the Hearings Examiner APPROVES this request, subject to the understanding that the Applicant is required to adhere to all applicable codes and laws, and is subject to the following conditions of approval:

Conditions of Approval

- A. Final Plat: Conditions that must be met prior to Final Plat approval and recording; or if improvements are approved by the county for bonding, such conditions shall be met prior to issuance of Building Permits**
- A-1 The Applicant shall submit a separate site plan showing compliance with all conditions of approval. (See Land Use Finding 2)
- A-2 The Applicant shall revise the final plat to show accurate lot sizes and dimensions. (See Land Use Finding 3)

- A-3 The density calculations shall be recorded on the final plat and shown on the approved site plan. (See Land Use Finding 4)
- A-4 A note stating that “No more than 40% of the total square footage of the front façade of each unit may be garage door area” shall be recorded on the final plat and shown on the approved site plan. (See Conditions Land Use Finding 5)
- A-5 The proposed development shall comply with the applicable standards contained in CCC 18.402A. (See Land Use Finding 6)
- A-6 The Applicant shall revise the site plan to clearly identify paving for the parking and maneuvering areas. (See Land Use Finding 8)
- A-7 The Applicant shall revise the site plan to include wheel stops and/or curbs as required by CCC 18.402A.060(A)(10). (See Land Use Finding 9)
- A-8 Tract E, which contains the proposed parking lot, shall be conveyed to a Homeowner’s Association for ownership and maintenance of the facility. (See Land Use Finding 10)
- A-9 The Applicant shall revise the landscape plan so that groundcover completely covers the remainder of the buffer area along the west property line of Lots 15-18. (See Land Use Finding 11)
- A-10 The Applicant shall revise the landscape plan to include trees along the western side of the proposed stormwater facility. (See Land Use Finding 12)
- A-11 The Applicant shall revise the site plan and landscape plan to include landscape islands for the proposed parking lot. These landscape islands shall comply with the standards of 18.402A.050(E)(3)&(4). (See Land Use Finding 13)
- A-12 The Applicant shall revise the landscape plan to show shrubs supplied in a minimum of five (5) gallon containers or equivalent burlap balls with a minimum spread of 30 inches. (See Land Use Finding 14)
- A-13 The Applicant shall revise the landscape plan so that a minimum 20% of the site is landscaped to at least an L1 standard. (See Land Use Finding 15)
- A-14 All planting and transplanting activities shall take place prior to Final Plat approval, unless otherwise postponed through the establishment of a performance/maintenance bond, escrow account, or other financial guarantee acceptable to the Planning Director. (See Habitat Finding 1)
- A-15 The Applicant shall enter all Oregon white oak trees that are retained, transplanted, or planted on the site, and the off-site oak preservation area into a Habitat Conservation Covenant prior to Final Plat approval. (See Habitat Finding 1)

- A-16 Final Wetland Permit approval shall be required. (Standard Wetland Permit Condition)
- A-17 The Final Enhancement/Mitigation plan shall be revised to meet the required 5:1 enhancement ratio. (See Wetland Finding 4)
- A-18 The Applicant shall reimburse the County for the cost of concurrency modeling incurred in determining the impact of the proposed development, in an amount not to exceed \$1,500. The reimbursement shall be made within 60 days of issuance of the Staff Report with evidence of payment presented to staff at Clark County Public Works. (See Transportation Concurrency Finding 2)
- A-19 The Applicant shall supply evidence that the required flow is available or receive approval from the Fire Marshal's office for an alternative method of meeting the fire flow requirement. (See Fire Protection Finding 2)
- A-20 The Applicant shall provide fire hydrants such that the maximum spacing between hydrants does not exceed 300 feet and such that no portion of any building exterior is in excess of 300 feet from a fire hydrant as measured along approved fire apparatus access roads. (See Fire Protection Finding 3)
- A-21 Unless waived by the fire district chief, fire hydrants shall be provided with appropriate 'storz' adapters for the pumper connection. (See Fire Protection Finding 4)
- A-22 The local fire district chief approves the exact locations of fire hydrants. As a condition of approval, the Applicant shall contact Fire District 6 at (360) 576-1195 to arrange for location approval. (See Fire Protection Finding 5)
- A-23 The Applicant shall provide and maintain a six-foot clear space completely around every fire hydrant. (See Fire Protection Finding 6)
- A-24 The Applicant shall remove existing improvements and construct new roadways and utilities in a manner that provides a smooth and even transition in a manner to be determined during review and approval of the final construction plans. The final plans shall clearly address the measures taken to preserve and maintain essential services to the existing home sites including, but not limited to, storm and sanitary sewer, mail delivery, and access to the existing lots by residents and emergency vehicles during construction of the Phase 2 improvements. (See Transportation Finding 2)
- A-25 The final plat shall identify all access easements required to provide all lots with access to public or private roadways. A maximum of three legal lots may use a joint driveway to access a public or private road. Lot 18 shall not be allowed to access NE 7th Court from the joint driveway serving Lots 15-17. (See Transportation Finding 3)
- A-26 The Applicant shall construct the thickened sidewalk along the cul-de-sac frontage of NE 7th Court and that portion of the frontage on Tract B required to transition from the existing to proposed roadway. (See Transportation Finding 5)

- A-27 All lots shall be designed to provide positive drainage from bottom of footings to an approved stormwater system. (See Stormwater Finding 3)
- A-28 The Applicant shall extend storm sewer collection pipes in the Phase 2 area of the site if it cannot be demonstrated that the proposed overland stormwater conveyance meets the requirements of CCC 13.29.310(D)(8). (See Stormwater Finding 3)
- A-29 Easements or a covenant acceptable to the director shall be provided to the county for purposes of inspection of privately maintained facilities. (See Stormwater Finding 3)
- A-30 The Applicant shall prepare and submit a final stormwater report in compliance with the requirements of CCC 13.29.530. (See Stormwater Finding 3)

B. Conditions that must be met prior to issuance of Building Permits

- B-1 The existing conservation covenant (AF#3185538) shall not be released without Final Wetland Permit approval. (See Wetland Finding 5)
- B-2 Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process. (See Fire Protection Finding 1)
- B-3 Impact fees shall be paid prior to issuance of a building permit for each lot as follows:
- Park Impact Fees: \$1,120.00 (Park Plan District No. 10)
(Acquisition – \$799, Development - \$321)
 - Traffic Impact Fees: \$1,524.19 (Mt. Vista Traffic District)
 - School Impact Fees: \$1,450.00 (Vancouver School District)

If a building permit application is made more than three years following the date of preliminary plat approval, the impact fees shall be recalculated according to the then-current ordinance rate. (See Impact Fee Finding 1)

C. Conditions that must be met prior to issuance of Occupancy Permits

- C-1 Sidewalks along the frontage of each residential lot shall be constructed prior to the issuance of occupancy permit for that residence. (See Transportation Finding 5)

D. Notes Required on Final Plat

The following notes shall be placed on the final plat:

D-1 Garage Doors:

“No more than 40% of the total square footage of the front façade of each unit may be garage door area”

D-2 Archaeological:

"If any cultural resources are discovered in the course of undertaking the development activity, the Office of Archaeology and Historic Preservation in Olympia and Clark County Community Development shall be notified. Failure to comply with these State requirements may constitute a Class C Felony, subject to imprisonment and/or fines."

D-3 Mobile Homes:

"Placement of Mobile Homes is prohibited."

D-4 Impact Fees:

"In accordance with CCC 18.65, the School, Park and Traffic Impact Fees for each dwelling in this subdivision are: \$1,120.00 (\$799- Acquisition; \$321 - Development for Park District No. 10), \$1,524.19 (Mt. Vista TIF sub-area) and \$1,450.00 (Vancouver School District), respectively. The impact fees for lots on this plat shall be fixed for a period of three years, beginning from the date of preliminary plat approval, dated _____, and expiring on _____. Impact fees for permits applied for following said expiration date shall be recalculated using the then-current regulations and fees schedule."

D-5 Sidewalks:

"Prior to issuance of occupancy permits, sidewalks shall be constructed along all lots as noted."

D-6 Utilities:

"An easement is hereby reserved under and upon the exterior six (6) feet at the front boundary lines of all lots for the installation, construction, renewing, operating and maintaining electric, telephone, TV, cable, water and sanitary sewer services. Also, a sidewalk easement, as necessary to comply with ADA slope requirements, shall be reserved upon the exterior six (6) feet along the front boundary lines of all lots adjacent to public streets."

D-7 Critical Aquifer Recharge Areas:

"The dumping of chemicals into the groundwater and the use of excessive fertilizers and pesticides shall be avoided. Homeowners are encouraged to contact the State Wellhead Protection program at (206) 586-9041 or the Washington State Department of Ecology at 800-RECYCLE for more information on groundwater /drinking supply protection."

D-8 Erosion Control:

"Building Permits for lots on the plat shall comply with the approved erosion control plan on file with Clark County Building Department and put in place prior to construction."

D-9 Driveways:

"All residential driveway approaches entering public roads are required to comply with CCC 12.05A."

D-10 Private Roads:

"Clark County has no responsibility to improve or maintain the private roads contained within or private roads providing access to the property described in this plat. Any private access

street shall remain a private street unless it is upgraded to public street standards at the expense of the developer or adjoining lot owners to include hard surface paving and is accepted by the County for public ownership and maintenance."

D-11 Privately Owned Stormwater Facilities:

"The following party(s) are responsible for long-term maintenance of the privately owned stormwater facilities: Homeowners Association for Windmill Terrace."

E. Standard Conditions

This development proposal shall conform to all applicable sections of the Clark County Code. The following conditions shall also apply:

Land Division:

- E-1 Within 5 years of preliminary plan approval, a Fully Complete application for Final Plat review shall be submitted.
- E-2 Prior to recording the final plat, the Applicant shall submit information (per CCC 17.301.100) verifying that the required land division landscape has been installed in accordance with the approved landscape plan(s); or if landscaping is approved by the county for bonding or pre-payment, this condition shall be met prior to issuance of building permits.

Habitat:

- E-3 The Applicant shall implement the "Oregon White Oak Habitat Conservation Plan," submitted by Ecological Land Services, Inc. and dated June 24, 2004 (Exhibit 35), except as amended herein. (See Habitat Finding 1)
- E-4 The Applicant shall minimize grading (cuts or fills) within the dripline of retained trees to what is absolutely necessary to construct the subdivision. (See Habitat Finding 1)
- E-5 The Applicant shall ensure an 80% survival rate for all planted vegetation after three (3) growing seasons. (See Habitat Finding 1)
- E-6 All cut Oregon white oak trees shall be retained on the site or on the off-site wetland mitigation area as downed woody debris. Discretion will be left up to the Applicant regarding specific placement of tree boles. (See Habitat Finding 1)

Wetlands:

- E-7 The requirements of CCC Section 13.36.250 shall apply to the wetland mitigation site. These requirements include:
 - a) Demarcation of wetland and/or buffer boundaries established prior to, and maintained during construction (i.e. sediment fence);
 - b) Permanent physical demarcation of the boundaries in a manner approved by the Development Services Manager (i.e. fencing, hedgerows, berms etc.) and posting of approved signage on each lot or every 100 ft of the boundary, whichever is less;

Recording a conservation covenant with the County Auditor that runs with the land and requires that the wetlands and buffers remain in natural state.

Fire Protection:

- E-8 The Applicant shall ensure that fire apparatus access roads maintain an unobstructed width of not less than 20 feet, an unobstructed vertical clearance of not less than 13.5 feet, with an all weather driving surface and capable of supporting the imposed loads of fire apparatus. (See Fire Protection Finding 7)

Water Wells and Septic Systems:

- E-9 Submittal of a "Health Department Evaluation Letter" and acceptable "Health Department Well/Septic Abandonment Letter" (if required from the Health Department Evaluation Letter) are required as part of the Final Construction Plan Review application. (See Water & Sewer Service Finding 2)

Pre-Construction Conference:

- E-10 Prior to construction or issuance of any grading or building permits, a pre-construction conference shall be held with the County.

Erosion Control:

- E-11 Prior to construction, the Applicant shall submit and obtain County approval of a final erosion control plan designed in accordance with CCC 13.29 or 13.27A (as applicable per the vesting date).
- E-12 For land divisions, a copy of the approved erosion control plan shall be submitted to the Chief Building Official prior to final plat recording.
- E-13 Prior to construction, erosion/sediment controls shall be in place. Sediment control facilities shall be installed that will prevent any silt from entering infiltration systems. Sediment controls shall be in place during construction and until all disturbed areas are stabilized and any erosion potential no longer exists.
- E-14 Erosion control facilities shall not be removed without County approval.

Excavation and Grading:

- E-15 Excavation/grading shall be performed in compliance with Appendix Chapter 33 of the Uniform Building Code (UBC).
- E-16 Site excavation/grading shall be accomplished, and drainage facilities shall be provided, in order to ensure that building foundations and footing elevations can comply with CCC 14.04.252.

Stormwater:

- E-16 Prior to construction, the Applicant shall submit and obtain County approval of a final stormwater plan designed in conformance to CCC 13.29 or 13.25A (as applicable per the vesting date).

Transportation:

E-17 Prior to construction, the Applicant shall submit and obtain County approval of a final transportation design in conformance to CCC 12.05.

Dated this _____ day of October, 2004

J. Richard Forester
Hearing Examiner

NOTE: *Only the decision and the condition of approval are binding on the Applicant as a result of this order. Other parts of the final order are explanatory, illustrative and/or descriptive. They may be requirements of local, state, or federal law, or requirements which reflect the intent of the Applicant, the county staff, or the Examiner, but they are not binding on the Applicant as a result of the final order unless included as a condition.*

An **appeal** of any aspect of the Hearing Examiner's decision, except the SEPA determination, may be appealed to the Board of County Commissioners only by a party of record. A party of record includes the Applicant and those individuals who signed the sign-in sheet or presented oral testimony at the public hearing, and/or submitted written testimony prior to or at the Public Hearing on this matter.

The appeal shall be filed with the Board of County Commissioners, 1013 Franklin Street, Vancouver, Washington, 98668, within fourteen (14) calendar days from the date the notice of final land use decision is mailed to parties of record.

Any appeal of the final land use decisions shall be in writing and contain the following:

1. The case number designated by the County and the name of the Applicant;
2. The name and signature of each person or group (petitioners) and a statement showing that each petitioner is entitled to file an appeal as described under Section 18.600.100 (A) of the Clark County Code. If multiple parties file a single petition for review, the petition shall designate one party as the contact representative with the Development Services Manager. All contact with the Development Services Manager regarding the petition, including notice, shall be with this contact person;
3. The specific aspect(s) of the decision and/or SEPA issue being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied, on to prove the error; and,

4. If the petitioner wants to introduce new evidence in support of the appeal, the written appeal also must explain why such evidence should be considered, based on the criteria in subsection 18.600.100 (D)(2).
5. A check in the amount of \$239 (made payable to the Clark County Board of County Commissioners).